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Letter dated 14 March 2016 from the Permanent Representative of Germany to the United Nations addressed to the President of the Security Council

Within the framework of the "Wiesbaden process", the German Government hosted a fourth industry outreach conference on Security Council resolution 1540 (2004) in Wiesbaden, Germany, on 19 and 20 November 2015, focusing on the theme "Private sector engagement in strategic trade controls: recommendations for effective approaches on United Nations Security Council resolution 1540 (2004) implementation". The international conference was organized in cooperation with the United Nations Office for Disarmament Affairs and the German Federal Office for Economic Affairs and Export Control, with financial support from the Governments of the Republic of Korea and the United States as well as the European Union.

In its resolution 1977 (2011), the Security Council explicitly encouraged the Security Council Committee established pursuant to resolution 1540 (2004) (1540 Committee) to draw also on relevant expertise, including civil society and the private sector (para. 12). In this context, industry is an important stakeholder and partner in combating the proliferation of weapons of mass destruction to non-State actors.

The "Wiesbaden process" has become a successful model. The Fourth Wiesbaden Conference enabled the more than 70 participants from Governments, the 1540 Committee, companies, industry associations, international organizations and academia to share lessons learned and effective practices in support of an active and comprehensive implementation of resolution 1540 (2004). Various private sector industry initiatives were presented in this context. The 2015 Wiesbaden conference concluded by acknowledging the importance of continuing and regionalizing the "Wiesbaden process" in order to successfully and globally implement resolution 1540 (2004). A summarized report of the conference is attached to the present letter (see annex).

The objective of the conference was also to actively contribute to the 1540 Committee's Comprehensive Review in 2016 by focusing on the lessons learned in the previous Wiesbaden conferences and by making concrete proposals. Three outcome documents have thus been compiled to this end under our responsibility: "Key elements of effective industry compliance practices (ICP programmes) to be used by companies" (enclosure I); "Key elements for effective cooperation with and outreach to industry by Governments" (enclosure II) and

"New trends and challenges in the area of strategic trade controls identified by academia and industry" (enclosure III).

I would be grateful if you could circulate the present letter, the conference report and the three outcome documents to the members of the Security Council and issue them as a document of the Council.

(*Signed*) Harald **Braun**
Permanent Representative of Germany to the United Nations

Annex to the letter dated 14 March 2016 from the Permanent Representative of Germany to the United Nations addressed to the President of the Security Council

Fourth Wiesbaden Conference, Germany, 19 and 20 November 2015

Private sector engagement in strategic trade controls: recommendations for effective approaches on United Nations Security Council resolution 1540 (2004) implementation
A contribution to the Security Council 1540 Committee Comprehensive Review in 2016

Executive summary

The private sector is an important stakeholder and partner to Governments in combating the proliferation of weapons of mass destruction, as it has to implement the laws which have been adopted by Member States. An effective partnership between States and private sector industry is therefore vital for successful non-proliferation efforts. In Security Council resolution 1977 (2011), the 1540 Committee is encouraged, at its discretion, to draw also on relevant expertise, including from civil society and the private sector, with, as appropriate, their State's consent. The Wiesbaden process focuses on private sector engagement in the specific context of resolution 1540 (2004), and has so far hosted four international 1540 industry outreach conferences from 2012 to 2015, which were held in Wiesbaden and Frankfurt, Germany. Last year's Wiesbaden conference was entitled "Private sector engagement in strategic trade controls: recommendations for effective approaches on United Nations Security Council resolution 1540 (2004) implementation". The objective of the conference was to contribute to the 1540 Committee comprehensive review in 2016 by focusing on the lessons learned in the previous Wiesbaden conferences.

Three outcomes were compiled to this end, which are submitted to the 1540 Committee as annexes to this report:

- Key elements of effective industry compliance practices (ICP programmes) to be used by companies
- Key elements for effective cooperation with and outreach to industry by Governments (from the industry's perspective)
- New trends and challenges in the area of strategic trade controls identified by academia and industry

The main goal of the Fourth Wiesbaden Conference was to enable companies, industry associations and other private sector entities to share lessons learned and effective practices in support of an active and comprehensive implementation of resolution 1540 (2004). Participants discussed in detail how to develop operating networks and programmes within industry to counter the proliferation of weapons of mass destruction to non-State actors, including terrorists, in the form of private sector initiatives. During the 2015 Wiesbaden conference, various industry initiatives were presented in this context. The Wiesbaden process has become a successful model, synonymous with the outreach of the 1540 Committee and its Expert Group, Member States and relevant international organizations to private

sector entities from appropriate industry sectors to support the implementation of resolution 1540 (2004). The 2015 Wiesbaden conference concluded by acknowledging the importance of continuing and regionalizing the Wiesbaden process in order to successfully and globally implement resolution 1540 (2004). The German Government is prepared to continue supporting this process and to host or co-host subsequent conferences. One of the achievements of the Fourth Wiesbaden Conference was the commitment to its continuation at a regional level.

The Republic of Korea has announced that it will host a regional event in the spirit of the Wiesbaden process in Seoul in September 2016.

1. Preface

United Nations Security Council resolution 1540 (2004) requires United Nations Member States to close any legislative and regulatory loopholes to prevent non-state actors from obtaining access to weapons of mass destruction, their means of delivery and related materials. In the context of resolution 1540 (2004) and its follow-up resolutions, the Security Council also acknowledged the importance of private sector engagement. In particular, in resolution 1977 (2011) the 1540 Committee is encouraged, at its discretion, to draw — among other sources — on relevant expertise in the private sector.

The resolution imposes legally binding obligations on all United Nations Member States to have and enforce appropriate and effective measures against the proliferation of nuclear, chemical and biological weapons and their means of delivery, including controls over related material. However, industry remains a critical partner for Governments in the effective implementation of resolution 1540 (2004), since these laws and control measures are addressed to industry, including the private sector. It is therefore crucial to keep industry informed and maintain dialogue to team up in the fight against the proliferation of weapons of mass destruction.

On these grounds the German Government, in cooperation with the United Nations Office for Disarmament Affairs, initiated the Wiesbaden process, focusing on private sector engagement in the specific context of resolution 1540 (2004). It has so far hosted four major international industry outreach conferences since 2012. While the 2012 conference aimed to strengthen the partnership between government and industry in general, the 2013 conference focused on detailed aspects of Security Council resolution 1540 (2004) implementation in the area of biosecurity, and the 2014 conference sought to identify non-proliferation-related compliance and management strategies within companies.

The 2015 Wiesbaden Conference was entitled "Private sector engagement in strategic trade controls: recommendations for effective approaches on United Nations Security Council resolution 1540 (2004) implementation — a contribution to the 1540 Committee comprehensive review 2016". It focused particularly on contributing to the 1540 Committee comprehensive review by compiling effective approaches on resolution 1540 (2004), both by recapitulating the findings of previous conferences and by summarizing responses to new trends and challenges. The outcomes annexed to this report form a contribution to resolution 1540 (2004).

Comprehensive review in 2016

The review is tasked with assessing the progress on implementation made since the previous review in 2009 and recommending further steps or measures for the 1540 Committee to serve the common interest, i.e. preventing the proliferation of weapons of mass destruction to non-State actors, including terrorists. As the Committee seeks wide-ranging input for its comprehensive review, the German contribution may help to develop better and more appropriate ways to work with and inform industry and the public on their obligations arising from national laws implementing the resolution.

2. Fourth Wiesbaden Conference

In the tradition of the Wiesbaden process, the 2015 conference, on private sector engagement in strategic trade controls brought together private sector representatives and regulators in order to encourage discussion and exchange of effective practices. The conference was organized in cooperation with the United Nations Office for Disarmament Affairs, with financial support from the Governments of the Republic of Korea and the United States, as well as from the European Union. Logistical support and substantial input was provided by the German Federal Office for Economic Affairs and Export Control.

The majority of the approximately 70 participants represented industry associations and initiatives, as well as global enterprises, operating in diverse sectors and jurisdictions. Other participants included compliance experts, as well as representatives from relevant international organizations, government authorities and academia. The two-day conference featured lively discussions throughout the event as well as presentations designed to further promote cooperation between industry and regulators to improve industry dialogue within the framework of resolution 1540 (2004). Speakers emphasized that the Wiesbaden process has helped to strengthen awareness of the need to promote non-proliferation at a global level. In times of terrorist threats and attacks, such as those in Paris, a united and comprehensive approach to preventing proliferation of weapons of mass destruction to non-State actors is becoming more and more important.

One main goal was the identification of key elements of effective industry compliance practices (ICP) by incorporating the outcomes of previous conferences. An additional focus was the identification of key elements of effective regulatory actions from the industry's perspective. Participants engaged in constructive debates addressing how a future public-private partnership could be defined and what practical steps would have to be taken in this direction to achieve long-lasting efficiency. The Fourth Wiesbaden Conference included practical discussions on how to enhance this partnership and how compliance management throughout different industry sectors could be facilitated.

Another aim of the conference was to discuss the feasibility and value of industry and private sector networks. Previous conferences had stressed the need to enhance non-proliferation-related information-sharing among industry representatives, which — despite business competition — is in the interests of all private sector actors.

In conclusion, participants agreed on the idea of continuing and even replicating the Wiesbaden process. To this end, the Republic of Korea has announced its intention to host a regional event, in the spirit of the Wiesbaden process, in Seoul in September 2016.

3. Proceedings

3.1 Update on international trends and new developments in the area of strategic trade controls

Government representatives of six important export markets (Germany, India, Mexico, Poland, the Republic of Korea and the United States of America) provided overviews about developments in their respective States, especially with regard to national legislation and licensing procedures. Discussions focused on the respective agencies involved in the licensing process, timelines for handling licence applications, updating of control lists, possibilities for simplified procedures and the importance of online tools such as webinars. Furthermore, they stressed the importance of industry-to-industry cooperation and outreach to industry. It was recognized that industry feedback is necessary when it comes to legislative reforms.

Requesting and taking into consideration industry comments on new draft legislation would lead to a better final legislative framework. Industry representatives welcomed such initiatives requesting their input and were eager to proactively find a balance between an industry-friendly and at the same time proliferation-proof framework.

Conference participants conceded that, in order to establish a truly level playing field, the strong global harmonization of regulations is key, especially to stop companies from "licence shopping" in countries that only provide a weak legislative framework. All conference participants welcomed this panel as a chance to meet and discuss with regulators. They recommend maintaining such formats in the future since they provide a chance for mutual exchange and updates as well as setting strong incentives for companies to send their representatives to 1540 conferences.

3.2 Reflections on the role of industry in fighting proliferation

Participants representing different industry sectors highlighted the importance of cooperation with Governments to successfully move forward in the fight against proliferation. They also reminded regulators that industry fully understands the importance of the issue at hand and is willing to play an active role. However, a reliable legislative and administrative environment is fundamental and one of the chief requirements most companies demand. Issuing of licences by the regulators, for example, must take place within reasonable and predictable time frames, since time is a very important factor in the export business.

The need for more education and awareness-raising was emphasized. It was suggested that large companies could partner with small to medium-sized enterprises (SMEs) in order to improve knowledge transfer. It was highlighted that establishing a culture of compliance within a company is a key factor for success. This culture must be represented and internalized by the top management of a company and convincingly communicated by the middle management. Furthermore, companies should be motivated to share best practices. If, for security reasons, a

company-to-company exchange is not an option, sharing with universities could be a possible solution.

Large companies are often better prepared than SMEs, so financing is definitely an important factor. A sustainable culture of compliance is needed; it should be in the DNA of every company, if not actually in the global business itself.

3.3 Defining recommendations on how obligations related to Security Council resolution 1540 (2004) can be facilitated and enhanced

During this session, three panel discussions were held to discuss and update on proliferation risk management through corporate governance. In the first panel, effective industry compliance practices (ICP) were identified. In the second panel, industry expectations of what authorities need to deliver were discussed. The detailed outcomes of the two discussions are compiled in two papers attached as enclosures I and II. The third panel, comprising four speakers, sought to identify new trends and challenges in the field of strategic trade control and compliance management. The trends and challenges presented in this panel derived from different sectors: companies handling dual-use items, the transport and the banking sector. The detailed outcomes of this discussion are compiled and attached as enclosure III.

Participants agreed that these trends and challenges will need to be addressed in much more detail in the future, either by individual Governments or preferably within a broader context in order to find comprehensive global solutions. Furthermore, it was suggested that the 1540 Committee could offer guidance to Governments with regard to the most important trends and challenges that were mentioned in this panel.

3.4 Defining the partnership: practical steps for continuing the dialogue with industry and how to solicit advice from industry

In the closing session two panel discussions were held, dealing with the future of the Wiesbaden process. The comprehensive implementation of resolution 1540 (2004) and the involvement of all relevant stakeholders — explicitly including industry — remains an important concern of the German Government, which is why the Wiesbaden process needs to be continued. The German Government is therefore prepared to continue this process and host or co-host further conferences.

These should take place both in Wiesbaden and abroad and in cooperation with other States in order to establish a more thematic and regional focus while also facilitating an industry-to-industry dialogue.

Panel 1: Networks

The Wiesbaden conferences aim to provide a global and cooperative discussion forum to allow relevant industries, associations and companies to share their experiences and effective practices as well as to discuss challenges. All previous conferences had identified the need to enhance non-proliferation-related information-sharing among industry representatives, which — despite business competition — is in the interests of all private sector actors. As a result, the idea of creating global industry compliance networks as a platform for exchange among

industry representatives, as well as between industry and national regulators, was put forward by panel members, and different models were suggested.

Participants found that compliance networks could complement the Wiesbaden conferences and other international forums by constituting a partnership that directly represents the ideas and input of industries and the private sector. Building a network within industry to counter the proliferation of weapons of mass destruction to non-State actors in the form of private sector initiatives would be very valuable. In this regard, networks could play an important role as civil society contributors to support Member States' efforts, to facilitate the sharing of best practices among different industries in compliance programmes and to enable big companies to partner with smaller companies in order to enhance their compliance. Last but not least, industry networks could help improve understanding and implementation of Security Council resolution 1540 (2004) by assuming a greater role in the process.

Panel 2: Regionalization

The Fourth Wiesbaden Conference was specifically designed to contribute to the Committee's comprehensive review and to chart a way forward for continued engagement with industry. Specific regions in the world and specific industry sectors are facing different challenges, and the Wiesbaden process should take these into consideration in future. To this end, participants suggested replicating the Wiesbaden process at a regional level in order to be able to focus on the particular needs and circumstances of a region or a specific industry. The Republic of Korea announced its intention to host a conference inspired by the Wiesbaden process, which will take place in Seoul in September 2016. In addition, other initiatives in the spirit of the Wiesbaden process were presented. Participants welcomed these regionalization efforts as a way to carry on the work the Wiesbaden process has set in motion.

Enclosure I

Key elements of effective industry compliance practices (ICP programmes) to be used by companies

1. **Leadership and corporate governance (culture/policy)**

   - Self-restrictions and ethics are a decisive factor in combating the proliferation of weapons of mass destruction
   - High-level awareness and responsibility in companies needed
   - Management commitment/top-level policy statement
   - Social responsibility should not be delegated or outsourced — as everywhere the individual contribution matters
   - Additional benefits of export-control-related compliance measures for company should be highlighted (such as propriety of information, protection of know-how, etc.)

2. **Identifying the scope of regulatory requirements**

   - Starting point: careful assessment of the scope of regulatory requirements
   - Need to be aware of relevant regulations in all countries of operation (broadest legal coverage possible/greatest common denominator) including follow-up on licences and authorizations obtained and retaining appropriate records
   - Advantages of global, group-wide solutions
   - Scope of compliance needs to be comprehensive: importing, exporting and re-exporting goods, technology, software, services and financial transactions

3. **Organizational structure and chain of responsibility**

   - Sufficient human resources are needed
   - Appoint a Chief Export Control Officer
   - Establish a compliance organization and give it time/power/resources/clear competencies
   - Define clear roles/responsibilities through guidelines and job descriptions — and communicate these rules within the company
   - Establish and make available written guidelines within the company — request guidance if necessary
   - Information Technology support is essential
   - Industry compliance practices (ICPs) have to be adapted to the scale and size of individual business

4. **Transactional due diligence**

- Check the export classification of the product, software, service or technology prior to export to determine whether any authorization is required
- Screening of transactions against all applicable rules (adherence to national and international legal requirements)
- Screen customers/"know your customer"/know your business
- Carefully watch for warning signs or "red flags"
- Follow your business process to ensure jurisdiction and classification are determined prior to export
- Secure compliance at all relevant units in company for licensing procedures, reports and record keeping
- Support the export control system by electronic data processing

5. **Documentation and archiving**

- Define period of safe-keeping
- Define scope of documents
- IT support

6. **Training and human resources matters**

- Important: selection of staff/skills; experience and knowledge of staff
- Training of all staff concerned: hold seminars for compliance staff, in-house training for operating personnel
- Hold general export control awareness seminar for remaining staff

7. **Monitoring and audits**

- Provide for checks and surveillance of workflow within company
- Provide for corrective action and conduct audits of ICP on a regular basis
- Provide for escalations/whistleblowing

Enclosure II

Key elements for effective cooperation with and outreach to industry by Governments

1. **Refinement of legislation according to businesses' needs**

- Business and administration need good, coherent and workable provisions which are easy to understand and provide a reasonable level of control ("keep it simple")
- Export-control-related regulations should reflect and consider the reality of systems, business models, and operations. Legislation (and its implementation) should be appropriate and risk-based
- Effective implementation and legal certainty are crucial: need for a clear assignment of responsibilities to each actor — export control authorities, trade industry, financial institutions, etc.
- Companies need good administration, i.e. quick, reliable and transparent application procedures
- A solid legal framework and agreed procedures are required to exchange sensitive procurement data/attempts (information technology within companies)
- Legislation and information need to be published and be easily accessible — ideally in different languages. Avoid unconsolidated publications, provide consolidated versions of legislation (e.g. sanctions lists); information provided to economic operators must be actionable
- A global supply chain calls for common and harmonized rules: eliminate conflicting and contradictory regulations; harmonize interpretation of rules between jurisdictions; harmonize regulations and control lists; streamline the regulatory regime so that it is fit for purpose; avoid use of undefined terms (otherwise no level playing field, but risk of market disparities and risk of penalization for misinterpretation)
- Consider developing more harmonized rules, possibly International Organization for Standardization (ISO) standards
- Take into account that small to medium-sized enterprises might need different approaches
- Address the gaps in the international regulatory regime: where deficiencies are found they may be addressed through international collaboration
- Consider common and general certification of suppliers, vendors, manufacturers and facility operators/mutual recognition of security management programmes
- International organizations (including the 1540 Committee) should create better opportunities for regional cooperation and sharing effective practices
- The 1540 Committee could help to compile examples of legislation, regulations and voluntary initiatives and list them on the website

2. Active involvement of industry

- A regular dialogue and mutual exchange of information with government authorities is key to discussing current developments in legislation and practice
- Consultation mechanisms between Governments and industry need to be strengthened, especially when it comes to developing regulations. Allow industry to comment on new concepts, and subject new concepts to test runs together with industry before implementation
- Useful: participation in expert hearings, ability to provide written submissions, position papers/participate in conferences, seminars etc.
- Keep industry informed about upcoming changes
- Work with industry regarding issues for industry/"Sharing is Caring" — governmental authorities and industrial players can form a trustful partnership

3. Rewards

- Compliance is in itself rewarding — but Governments might set up encouraging programmes to combat illicit procurement
- Mandatory versus voluntary measures (e.g. codes of conduct) — authorities should acknowledge industry voluntary compliance initiatives and praise industry for accomplishments once in a while
- Penalties and fines should be a last resort

Enclosure III

New trends and challenges in the area of strategic trade controls identified by academia and industry

1. **(Cross-border) supply chains**

   - Global supply chains are complex and Governments thus need to adapt (quickly) to evolving changes in technology and further upcoming trends
   - Need to harmonize legislation and interpretation of lists; sometimes more than a dozen countries involved within the same supply chain
   - Intangible transfer of technology is not really a new challenge but still important (technology transfers to subsidiaries, intranet access, cloud computing, server location, fragmentary technology transfers for data or system integration, etc.): lack of guidance on these issues

2. **Banking**

   - Guidance on how to deal with financial sanctions is needed: clear assignment of responsibilities for each actor, clear rules, legal certainty
   - Legal regimes have to be compatible with other already existing regimes in the banking sector
   - Crucial point: banks are involved only in financial not in goods transactions

3. **New technologies**

   - There is a clear absence of international controls on 3D printing/additive manufacturing which might pose a real threat in the future
   - Drones or unmanned armed vehicles in general are one new trend where more effective controls need to be developed
   - Biotechnology: the production of synthetic biological products is becoming easier; no need for laboratories but need for more and better control

Enclosure IV

List of participants

States and government authorities

Germany (Federal Foreign Office, Federal Office for Economic Affairs and Export Control), India (Ministry of External Affairs), Mexico (Secretariat of Economy), Poland (Ministry of Foreign Affairs), Republic of Korea (Korea Strategic Trade Institute, Ministry of Foreign Affairs, Ministry of Trade, Industry and Energy), USA (Department of Commerce and Department of State).

International and regional organizations

Caribbean Community Secretariat, European External Action Service, Organization for Security and Cooperation in Europe, Organization for the Prohibition of Chemical Weapons, United Nations, United Nations Office for Disarmament Affairs, 1540 Committee, 1540 Expert Group, International Criminal Police Organization (INTERPOL), World Customs Organization.

Companies and industry associations

Airbus Defence and Space GmbH, AREVA, DHL, Ericsson AB, European Association of Public Banks, Federation of Indian Chambers of Commerce and Industry, International Federation of Freight Forwarders Associations, Flextronics International (Poland), General Electric Company, Indian Chemical Council, GenoTec GmbH, Infineon Technologies AG, Linde Material Handling GmbH, Lufthansa Technik AG, Merck KGaA, Oerlikon Leybold Vacuum, Rolls-Royce, Royal Philips International, Siemens AG, Toshiba Corporation, TradeSecure LLC, United Technologies Corporation, Verband der Chemischen Industrie.

Academia, think tanks and other entities

Centre for Asia Pacific Trade Compliance and Information Security, Pacific Northwest National Laboratory, Stimson Center, Stockholm International Peace Research Institute.